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| FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413 | | | EXAMINER KUCAB, JAMIE R | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/803,396 | NONAKA, AKIRA | |
| | Examiner | Art Unit | |
| | JAMIE KUCAB | 3621 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08/29/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-18,31,33-35 and 50 is/are pending in the application.
- 4a) Of the above claim(s) 50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-18,31 and 33-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgements

1. Applicant's response filed August 29, 2008 is acknowledged.
2. Claims 1, 3-18, 31, 33-35, and 50 are pending in the application. Claim 50 is withdrawn from consideration.
3. This Office action is given Paper No. 20081126 for reference purposes only.

Election/Restrictions

4. Newly submitted claim 50 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:
 - I. Claims 1, 3-18, 31, 33-35, drawn to a data distribution system, classified in class 705, subclass 52.
 - II. Claim 50, drawn to a method of transferring data, classified in class 380, subclass 201.

The inventions are distinct, each from the other because of the following reasons:

5. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced in a single computer without the use of a network.

6. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

7. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 50 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

8. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise

require all the limitations of the allowable product claim will be considered for rejoinder.

All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

9. In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. §121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 1, 3-18, 31, and 33-35 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

12. Regarding claims 1 and 31, Applicant's recitation "examining means for..." would be unclear to a person having ordinary skill in the art. Based on pg. 1 (4th line from the bottom) and pg. 4, lines 12-13 of Applicant's replacement section V of the Appeal Brief filed April 10, 2008, the structure corresponding to the "examining means for..." is the Electronic Music Distribution System 1 (Fig. 1). First, it is unclear how many structures are encompassed by this "examining means for..." limitation. EMD System 1 as shown in Fig. 1 appears to contain five different computers. Is this examining means all five computers? Is it one of the computers? Is it an apparatus contained within each of the computers? Second, the "examining means for..." also appears to be the same system as is recited in the preamble of claim 1. Is the examining means the entire system? Or is it a specific structure within the system? Is the scope of claim 31 an apparatus within the system or the entire EMD system? Third, in a means-plus-function claim in which the disclosed structure is a computer (or multiple computers) programmed to carry out an algorithm, the corresponding structure must include a specific algorithm disclosed in the specification.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1, 3-18, 31, and 33-35 are rejected under 35. U.S.C. § 103 as being unpatentable over Ryan (US 5,513,260 A) in view of Stefik (US 5,629,980 A) and in further view of Vogel (US 5,446,488).

Claims 1, 31, and 50:

15. Ryan (See at least Fig. 1, Col. 1, lines 60-65, Col. 3, lines 30-65) discloses a means for reproducing content (CD-player), a recorder (CD-recorder) and means there between for examining and controlling transfer (black boxes) substantially as claimed. The differences between the above and the claimed invention is the use of explicit control. It is noted that a committed content duplicator would control and examine files illicitly copied (and has done so since for at least a decade with the advent of peer to peer file sharing) and is therefore believed to be the functional equivalent of the claimed limitations. Ryan does not explicitly disclose copying digital data on an optical medium. Stefik, however, in at least column 1, lines 10-24 teaches the reproduction of optical media. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist.

16. Ryan does not disclose the newly-added limitation of wherein said usage space information indicates system information of said recording apparatus and said

reproducing apparatus, ownership right information of said content data, format information of said content data, and distributing profit information obtained by the distribution of said content data. Stefik, however, in at least Figure 15 as well as associated text does disclose the controlled copying of digital data in a digital rights management environment to include system information (items 1504, 1505, 1506), ownership rights information (items 1501- 1503), format of digital data (item 1506), and profit distribution (items 1517-1525). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the cd recording system of Ryan with Stefik's Digital Rights Management techniques because, "A fundamental issue facing the publishing and information industries as they consider electronic publishing is how to prevent the unauthorized and unaccounted distribution or usage of electronically published materials. Electronically published materials are typically distributed in a digital form and recreated on a computer based system having the capability to recreate the materials. Audio and video recordings, software, books and multimedia works are all being electronically published. Companies in these industries receive royalties for each accounted for delivery of the materials, e.g. the sale of an audio CD at a retail outlet. Any unaccounted distribution of a work results in an unpaid royalty (e.g. copying the audio recording CD to another digital medium)" (Stefik: column 1, lines 10-24).

17. Ryan does further disclose an examining means for deciding whether said recording medium is of a first type having a configuration enabling recorded data to be effectively read out by performing authentication processing or of a second type having no such configuration and enabling read out of the recorded data without authentication

(col. 3, line 63 - col. 4, line 11), examining means for deciding whether said reproducing apparatus is of a first type for reproducing after the authentication processing or of a second type for reproducing without that processing (col. 3, line 63 - col. 4, line 11), and examining means for deciding whether said recording apparatus is of a first type for recording after the authentication processing or of a second type for recording without that processing (col. 3, line 63 - col. 4, line 11). However, Ryan does not explicitly teach an examining means that decides whether data is to be distributed in encrypted or unencrypted form.

18. Stefik does teach a means for distributing data in its unencrypted state, but does not teach this is combination with the sending of data in its encrypted state (Table 2).

19. However, Vogel does teach an examining means to decide whether data should be transmitted in its encrypted or unencrypted state (col. 3, lines 28-48. Therefore, it would have been obvious to one of ordinary skill in the art to combine the references of Vogel and Ryan for the useful purpose of either forcing people to pay to be able to receive and decode the programs, or on the contrary, allowing anyone to view the program without payment, as taught by Vogel.

Claim 3:

20. Regarding disabling limitations of claim 3, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are

conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

Claim 4:

21. Regarding disabling limitations of claim 4, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

Claim 5:

22. Regarding the enabling limitations claim 5, Ryan (See Fig 1, Col. 1, lines 60-65, Col. 3, lines 30-65) disclose a means for reproducing content (cd player), a recorder and means there between for examining and controlling transfer (black boxes) for clear text cd which reproduction is enabled (that is common to all cd duplication systems) that is a functional equivalent of the claimed limitations.

Claim 6:

23. Regarding the enabling limitations claim 6, Ryan (See Fig. 1, Col. 1, lines 60-65, Col. 3, lines 30-65) disclose a means for reproducing content (cd player), a recorder and means there between for examining and controlling transfer (black boxes) for clear text cd which reproduction is enabled (that is common to all cd duplication systems) that is a functional equivalent of the claimed limitations.

Claim 7:

24. Regarding disabling limitations of claim 7, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

Claim 8:

25. Regarding disabling limitations of claim 8, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill

in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

Claim 9:

26. Regarding the enabling limitations claim 9, Ryan (See Fig. 1, Col. 1, lines 60-65, Col. 3, lines 30-65) disclose a means for reproducing content (cd player), a recorder and means there between for examining and controlling transfer (black boxes) for clear text cd which reproduction is enabled (that is common to all cd duplication systems) that is a functional equivalent of the claimed limitations.

Claim 10:

27. Regarding the enabling limitations claim 10, Ryan (See Fig. 1, Col. 1, lines 60-65, Col. 3, lines 30-65) disclose a means for reproducing content (cd player), a recorder and means there between for examining and controlling transfer (black boxes) for clear text cd which reproduction is enabled (that is common to all cd duplication systems) that is a functional equivalent of the claimed limitations.

Claim 11:

28. Regarding disabling limitations of claim 11, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

Claim 12:

29. Regarding disabling limitations of claim 12, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

Claim 13:

30. Regarding the enabling limitations claim 13, Ryan (See Fig. 1, Col. 1, lines 60-65, Col. 3, lines 30-65) disclose a means for reproducing content (cd player), a

recorder and means there between for examining and controlling transfer (black boxes) for clear text cd which reproduction is enabled (that is common to all cd duplication systems) that is a functional equivalent of the claimed limitations.

Claim 14:

31. Regarding the enabling limitations claim 14, Ryan (See Fig. 1, Col. 1, lines 60-65, C o 1. 3, lines 30- 65) disclose a means for reproducing content (cd player), a recorder and means there between for examining and controlling transfer (black boxes) for clear text cd which reproduction is enabled (that is common to all cd duplication systems) that is a functional equivalent of the claimed limitations.

Claim 15:

32. Regarding disabling limitations of claim 15, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

Claim 16:

33. Regarding disabling limitations of claim 16, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

Claim 17:

34. Regarding the enabling limitations claim 17, Ryan (See Fig. 1, Col. 1, lines 60-65, Col. 3, lines 30-65) disclose a means for reproducing content (cd player), a recorder and means there between for examining and controlling transfer (black boxes) for clear text cd which reproduction is enabled (that is common to all cd duplication systems) that is a functional equivalent of the claimed limitations.

Claim 18:

35. Regarding the enabling limitations claim 18, Ryan (See Fig. 1, Col. 1, lines 60-65, Col. 3, lines 30-65) disclose a means for reproducing content (cd player), a recorder and means there between for examining and controlling transfer (black boxes) for clear text cd which reproduction is enabled (that is common to all cd duplication systems) that is a functional equivalent of the claimed limitations.

Claim 33:

36. Regarding disabling limitations of claim 33, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

Claim 34:

37. Regarding disabling limitations of claim 34, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

Claim 35:

38. Regarding disabling limitations of claim 35, Stefik (See at least Figs. 15 and 16) show reproduction and recording means with system control and encryption/authentication. It would have been obvious to the person having ordinary skill in this art to provide a similar arrangement for Ryan because the control elements are conventional functional equivalents and between reproduction and recording selection and control must always exist. Note that each of the applied items of evidence prevents and thus disables illegal copying that is a functional equivalent of the claimed limitations.

Examiner Note

39. The Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may be applied as well. It is respectfully requested from the Applicant, in preparing responses, to fully consider the reference in its entirety as potentially teaching all or part of the claimed invention as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Response to Arguments

40. Applicant's arguments with respect to the objections to claims 1 and 31 have been fully considered and are persuasive. The objections to claims 1 and 31 have been withdrawn.

41. The objections and rejections to claim 26 are withdrawn as moot due to claim 26 having been cancelled.

42. Applicant's arguments with respect to the 112 2nd ¶ rejection due to the twice-recited "a mounted recording medium" of claim 1 have been fully considered and are persuasive. This 112 2nd ¶ rejection of claim 1 due to the twice-recited "a mounted recording medium" has been withdrawn.

43. Applicant's arguments with respect to the 112 2nd ¶ rejections of claim 31 due to "the result of said examination" and the thrice-recited "a recording medium" have been fully considered and are persuasive. The 112 2nd ¶ rejections of claim 31 due to "the result of said examination" and the thrice-recited "a recording medium" have been withdrawn.

44. Applicant's arguments with respect to the 112 2nd ¶ rejections of claims 1 and 31 due to the recitation "examining means for..." have been fully considered but they are not persuasive. The 112 2nd ¶ rejections of claims 1 and 31 due to the recitation "examining means for..." of the previous Office action is maintained. Applicant further confuses the claim by arguing that the structure corresponding to the "examining means for..." is the end service center 100. Applicant makes no specific argument in support of this and merely points to eight figures and nine pages of specification. Applicant is

again reminded that in a means-plus-function claim in which the disclosed structure is a computer programmed to carry out an algorithm, the corresponding structure must include a specific algorithm disclosed in the specification.

45. Applicant's arguments with respect to the 112 2nd ¶ rejections of claims 1 and 31 due to the recitation "controlling means for..." have been fully considered and are persuasive. The 112 2nd ¶ rejections of claims 1 and 31 due to the recitation "controlling means for..." of the previous Office action have been withdrawn.

46. Applicant's arguments with respect to the 103 rejections of the claims have been fully considered but they are not persuasive. Ryan discloses an examining means (black boxes). Stefik discloses an examining means (Authorization Repository 202 or Master Repository 204). Vogel discloses an examining means (the broadcaster). The combination of these references discloses the functionality of Applicant's claimed examining means as discussed in the above rejection.

Conclusion

47. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. §1.136(a).

48. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 C.F.R. §1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

49. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jamie Kucab whose telephone number is 571-270-3025. The Examiner can normally be reached on Monday-Friday 9:30am-6:00pm EST.

50. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Fischer can be reached on 571-272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

51. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JK

/ANDREW J. FISCHER/
Supervisory Patent Examiner, Art Unit 3621